

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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Date: **OCT 22 2012** Office: HO CHI MINH CITY, VIETNAM FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink that reads "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Ho Chi Minh City, Vietnam. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Vietnam who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for willful *misrepresentation of a material fact in order to procure an immigration benefit*. The applicant is married to a U.S. citizen and the daughter of a lawful permanent resident, and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband and mother in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, the applicant contends she is innocent and did not marry her husband for immigration purposes. In addition, she submits a letter from her husband describing his extreme hardship.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [REDACTED] indicating they were married on September 24, 2003; two letters from [REDACTED] a letter from the applicant's mother, [REDACTED] copies of photographs of the applicant and her family; and an approved Petition for Alien Relative (Form I-130) filed by the applicant's brother. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) provides, in pertinent part:

(1) *The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien*

In this case, the field office director found that a Form I-130 filed on the applicant's behalf by the applicant's current husband, [REDACTED] was revoked on June 4, 2009, after USCIS determined that [REDACTED]

failed to show a bona fide marriage and that the marriage was entered into solely for an immigration benefit. According to the field office director, an investigation by the U.S. Consulate revealed that the applicant was still living with her after she had married . In addition, the field office director noted that the applicant did not list her husband on her waiver application as a qualifying relative and that the applicant listed her brother's address as her intended residence.

The applicant states that she never intended to commit any fraud. She states that after she divorced she only maintained a friendship with him and has not had any sexual or husband-wife relationship with him. She states that her ex-husband is from Cambodia and that he had to prove that their children were Vietnamese citizens with a Vietnamese address in order for him to gain Vietnamese citizenship. According to the applicant, in order to help his naturalization, she let him use her address as his permanent address for communication purposes with Vietnamese immigration officials. In addition, the applicant states that she did list her husband as a qualifying relative and includes a copy of her waiver application which shows her husband is listed on an attachment to her waiver application. Furthermore, the applicant states that her brother told her to use his address since he had filed a Form I-130 on her behalf. A letter from the applicant's current husband, states that the applicant is just friends with her ex-husband and that he visits their two children quite often. "assure[s] . . . that they were not living together . . ." He states that he and his wife love each other very much and that their relationship is a true relationship. A letter from the applicant's mother also states that the applicant's marriage to is a serious and true marriage and that there is no fraud in this case.

The Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. See Section 291 of the Act, 8 U.S.C. § 1361 ("Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document . . ."). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

After a careful review of the record, the AAO finds that the applicant has not met her burden of proving she is admissible to the United States. The AAO acknowledges that the applicant's waiver application did list her husband as a qualifying relative on an attachment. However, although the applicant provides a reasonable explanation that she allowed her ex-husband to use her address in order to communicate with Vietnamese immigration officials, she nonetheless has not provided any evidence to support this contention. Significantly, the record does not contain any letter or affidavit from with whom the applicant contends she is still friends, and there is no evidence to support her claim that he had to prove his children were Vietnamese citizens. Similarly, there is no letter from the applicant's brother corroborating her contention that he told her to use his address. Considering all of these factors, the AAO finds that the applicant has not shown through

independent, competent, and objective evidence that she is admissible to the United States. Therefore, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

Extreme hardship is “not a definable term of fixed and inflexible content or meaning,” but “necessarily depends upon the facts and circumstances peculiar to each case.” *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative’s family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative’s ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one’s present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. See generally *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm’r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator “must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. See, e.g., *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to

██████████ speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

In this case, the applicant's husband, ██████████, states that he was born in Vietnam and was a Vietnamese soldier in the former regime. According to ██████████, he was imprisoned in Communist camps in Vietnam for four years and was released in 1979. He contends he went to a Thai refugee camp in 1980 for one year, and then a refugee camp in the Philippines for eight months before coming to the United States in 1981. ██████████ states that relocating to Vietnam to be with his wife would mean living under the communist regime that he hates and that he risked his life to leave twenty-nine years ago. He states he loves his wife and that if he remains in the United States, he would only be able to afford visiting her in Vietnam once every two or three years.

A letter from the applicant's mother, ██████████, states that her husband was a former officer of the Old Regime Armed Forces and was detained by the communist regime in Vietnam for "reeducation." According to ██████████ her husband was released sometime in 1982 and was on a boat with one of their sons to secretly leave Vietnam. However, the applicant's mother states that her husband and son, as well as the other people on the boat, vanished and have not been seen since 1982. ██████████ contends she and her six other children lived under Vietnam's communist regime for twenty years. She contends her family was mistreated by the communists due to her husband's past association with the former regime. She states the applicant is her only child remaining in Vietnam.

After a careful review of the record, the AAO finds that if ██████████ or ██████████ returned to Vietnam to avoid the hardship of separation from the applicant, they would experience extreme hardship. The AAO recognizes the hardship both ██████████ and ██████████ experienced when they lived in Vietnam and their opposition to the communist regime. The applicant has submitted pictures of her father in his former regime uniform and explains that they are the only pictures that remain because her father destroyed everything related to the old regime. Under these unique circumstances, the AAO finds that the hardship ██████████ and ██████████ would experience if they returned to Vietnam to be with the applicant is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

Nonetheless, both ██████████ and ██████████ have the option of staying in the United States and the record does not show that either of them would suffer extreme hardship if they were to remain in the United States without the applicant. Although the AAO is sympathetic to the family's circumstances, if they decide to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. The

record does not show how the applicant's situation is unique or atypical compared to others in similar circumstances. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation). Even considering all of the evidence in the aggregate, there is insufficient evidence for the AAO to conclude that either [REDACTED] or [REDACTED] would suffer extreme hardship if they decided to remain in the United States without the applicant.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to either [REDACTED] or [REDACTED] the qualifying relatives in this case.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband or mother caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.